

1                   **BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**  
2                                   **IN MEDICINE AND SURGERY**

3 IN THE MATTER OF:                                    ) **Case Nos.: 3492, 3508, 3529, 3739M, 3748,**  
4 **PAUL BLUMBERG, D.O.**                                ) **3799 & 3861**  
5 Holder of License No. 1597                         ) **TERMINATION OF**  
6 For the practice of osteopathic medicine in the ) **ORDER FOR PROBATION**  
7 State of Arizona                                     )

8                   IT IS HEREBY ORDERED that the Consent Agreement to Findings of Fact,  
9 Conclusions of Law Order dated October 18, 2007 has been satisfied in full and that active  
10 license status is reinstated to Paul Blumberg, D.O. effective October 19, 2009.

11   ISSUED THIS 19<sup>TH</sup> DAY OF OCTOBER, 2009.

12   STATE OF ARIZONA  
13   BOARD OF OSTEOPATHIC EXAMINERS IN  
14   MEDICINE AND SURGERY



16   *Elaine LeTarte*

17 By: \_\_\_\_\_  
18 Elaine LeTarte, Executive Director

19 Original filed this 19th day of October 2009 with the:

20 Arizona Board of Osteopathic Examiners in Medicine and Surgery  
21 9535 East Doubletree Ranch Road  
22 Scottsdale AZ 85258-5539

23 Copy of the foregoing sent by regular mail  
24 this 19th day of October, 2009 to:

25 Paul Blumberg, D.O.  
Address of record  
\_\_\_\_\_

**BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**  
**IN MEDICINE AND SURGERY**

IN THE MATTER OF:

**PAUL BLUMBERG, D.O.**  
**Holder of License No. 1597**

For the practice of osteopathic medicine in the  
State of Arizona

) **Case Nos.: 3492, 3508, 3529, 3739M,**  
) **3748, 3799 & 3861**

) **CONSENT AGREEMENT TO FINDINGS**  
) **OF FACT, CONCLUSIONS OF LAW**  
) **ORDER**

By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners (hereafter "Board") and Paul Blumberg, D.O. (hereinafter "Respondent"), the parties, hereto agree to the following disposition to this matter.

1. Respondent acknowledges that he has read this Consent Agreement and Order; and, Respondent is aware of and understands the content of these documents.

2. Respondent understands that by entering into this Consent Agreement and Order, he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board action or to seek judicial review of the Consent Agreement and Order in state or federal court.

3. Respondent understands that this Consent Agreement and Order will not become effective unless approved by the Board and signed by its Executive Director.

4. Respondent further understands that this Consent Order and Order, once approved and signed, shall constitute a public record which will be disseminated as a formal action of the Board.

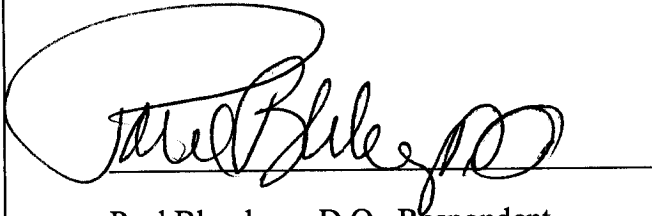
5. Respondent without admitting responsibility acknowledges and accepts the imposition of the statement of facts and conclusions of law and Order contained in the Consent Agreement and Order.

6. All admissions made by Respondent are solely for final disposition of this matter

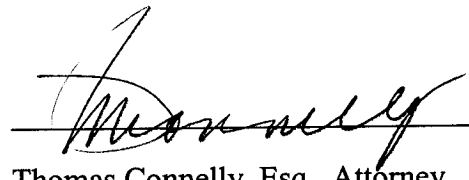
1 and any subsequent administrative proceedings or litigation involving the Board, Respondent and  
2 the State of Arizona; and, therefore, said admissions by Respondent are not intended for any  
3 other purpose, or for use in any other administrative regulatory proceeding, or litigation in  
4 another state or federal court.

5 7. Respondent acknowledges and agrees that upon signing and returning this  
6 document (or a copy thereof) to the Board's Executive Director, he may not later revoke or  
7 amend any part of the Consent Agreement and Order, without first obtaining Board approval.

8  
9 REVIEWED AND ACCEPTED THIS 18th DAY OF OCTOBER, 2007.

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13 Paul Blumberg, D.O., Respondent

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17 Thomas Connelly, Esq., Attorney  
18 for the Respondent

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20 **JURISDICTIONAL STATEMENTS**

21 1. The Board is empowered, pursuant to A.R.S. §§ 32-1800 et seq. to regulate the  
22 licensing and practice of osteopathic medicine in Arizona.

23 2. The Board has the authority to informally dispose by stipulation, agreed  
24 settlement, consent order or default pursuant to A.R.S. § 41-1092.05 (F) (5).

25 3. Respondent holds license No. 1597 to practice osteopathic medicine in Arizona.

**FINDINGS OF FACT**

**CASE No. 3492**

26 4. On February 14, 2004, the Board received a complaint from J.G containing  
27 several allegations for a "tummy tuck" procedure that the Respondent performed in February of  
28 2003.

5. J.G. alleged in her complaint that she has “been left with crooked and unnecessary scarring following this procedure.” Respondent’s records indicate JG did sign an informed consent to the procedure which detailed the fact that scarring is a known risk. A further review of the record in this matter also disclosed that Respondent performed a mild liposuction procedure in conjunction with the abdominoplasty procedure, but the informed consent signed by JG did not include written provisions related to the included liposuction procedure.

6. Respondent's position is that all aspects of the procedure(s) were explained to the patient prior to surgery, including the mild contouring liposuction, and there is a chart note indicating detailed discussions about the procedure were held. However, neither the chart note nor the detailed abdominoplasty informed consent executed by JG referenced the "mild liposuction" procedure.

**CASE No. 3508**

7. On March 24, 2005, the Board received a complaint from C.G alleging that the Respondent had failed to complete the surgery as agreed. Specifically, the complainant stated that Respondent agreed to do a breast augmentation and was going to put 450cc in each breast and perform an areola reduction. The operative report indicates Respondent put 435cc in the left breast and 465cc in the right.

8. Patient C.G. later complained one breast did not settle evenly with the other, however, records indicate this is a known and consented to risk, and the deviation amounted to approximately one centimeter.

9. A review of Respondent's records and the informed consent do specifically indicate that although amounts are discussed pre-surgery, the patient does consent to permit the doctor to deviate from these amounts during surgery to achieve what he believes will be uniformity of appearance.

10. Patient CG went to another doctor for reconstructive surgery. Upon removal of

1 the implants by the new physician, there were some discrepancies noted as to fill volume of the  
2 implants as compared to Respondent's medical records. CG also alleged in her complaint that  
3 records were not timely forwarded upon request.

4 **CASE No. 3748**

5 11. On July 6, 2006, the Board received a complaint from K.Y. alleging  
6 complications from a breast augmentation surgery that was completed on April 6, 2006 resulting  
7 in an infection and the removal of the implants on or about April 15, 2006.

8 12. Patient K.Y alleged inadequate post-operative care resulted in her having to be  
9 seen by several other physicians in attempting to manage the infection and subsequent removal  
10 of both implants by Respondent. A review of the various records indicates that K.Y. missed  
11 several post-operative appointments with Respondent and elected to see other physicians  
12 (primary care and ER) closer to her residence.

13 **CASE No. 3529**

14 13. On May 5, 2005 the Arizona Department of Health Services notified the Board  
15 that they had found The Blumberg Center in violation of operating a healthcare institution  
16 without a license because they were providing general anesthesia.

17 14. In addition, in a letter dated May 3, 2005 from the Program Manager with the  
18 Arizona department of Health Services stated that The Blumberg Center had been in violation of  
19 the aforementioned requirement in 2002, 2003, 2004, and 2005.

20 15. On or about November 30, 2005 Blumberg Center agreed to pay the Arizona  
21 Department of Health Services a \$5,000.00 civil penalty for failure to comply with their  
22 licensing requirements.

23 16. The Respondent is the owner and operator of The Blumberg Center and has  
24 operated the business since its inception in 1993.

25 17. In a letter dated May 12, 2006, the Respondent notified the Board that he no

1 longer practices general anesthesia at his surgical center. They only use conscious sedation  
2 which does not require licensure with the Department of Health Services.

3 **CASE No. 3739M**

4 18. On May 15, 2006, Respondent informed the Board of the details of CV2003-  
5 001027, which was a medical malpractice complaint filed in the Maricopa County Superior  
6 Court by M.L. The former patient did not file a complaint with this Board.

7 19. The Respondent voluntarily notified the Board of this matter during his license  
8 renewal process with the Board in December 2005. The complaint involved a breast  
9 augmentation performed on patient M.L. on or about February 11, 2002.

10 20. Respondent's record keeping in this matter appears inadequate and/or lacked  
11 adequate detail.

12 **CASE No. 3861**

13 21. On March 2, 2007, the Board received a complaint from E.T. alleging  
14 complications resulting from an abdominoplasty (tummy tuck) surgery that was completed on  
15 August 11, 2006. The complainant stated that she was in intense pain and subsequently  
16 developed an infection which was not adequately treated by Respondent through August 19,  
17 2006.

18 22. The chart notes reveal Respondent performed the surgery on a Friday and  
19 prescribed both Percocet and antibiotics. Thereafter, the chart notes indicate E.T. contacted the  
20 office to advise she had scratched off one of the sutures the following week. During that same  
21 week following surgery, Respondent performed two post-surgical examinations of E.T. and  
22 noted no signs or symptoms of infection. On August 19, 2006, Respondent departed for a  
23 lengthy vacation and transferred care of any patients to Dr. Marvin Borsand.

24 23. Patient E.T. was seen and treated for an infection and post operative healing  
25 issues by Dr. Borsand from August 22, 2006 through September 7, 2006. Care and treatment of

1 E.T. was returned to Respondent on September 7, 2006, and both physicians examined E.T. on  
2 that date noting no presence of infection.

3 24. Notwithstanding that most care was performed by Dr. Borsand, Patient E.T. also  
4 raises a records issue, contending that Respondent did not provide adequate informed consent for  
5 the liposuction completed during the abdominoplasty. Full and detailed informed consents and  
6 risk disclosures were signed by E.T. for the abdominoplasty procedure. However, although  
7 Respondent alleges and chart notes indicate the procedure was fully explained to E.T., specific  
8 details or consents related to the mild liposuction performed in conjunction with the  
9 abdominoplasty are lacking.

10 **CASE No. 3799**

11 25. On October 17, 2006, the Board received a complaint from M.F. alleging  
12 complications from a breast augmentation surgery that was completed on January 5, 2004. The  
13 complainant stated that she agreed with the Respondent to make her breasts symmetrical as  
14 possible by increasing her left implant volume to correct the asymmetry. Respondent's medical  
15 records indicated that the right implant received 500 cc and the left implant only 480 cc, making  
16 the previous asymmetry greater.

17 26. Patient M.F. also alleged that she was in pain, that her right breast was rippling,  
18 and that it was not softening. Some of these symptoms continued as she developed a capsular  
19 contracture. Respondent recommended follow-up examinations, but M.F. did not contact or  
20 return to Respondent's office for several months. Respondent performed a follow up surgical  
21 procedure on November 18, 2004. After that surgery, patient M.F. alleged that the pain became  
22 extreme and the right breast became swollen. Respondent responded to this by surgically  
23 draining the breast and inserted a drain.

24 27. Patient M.F. stated that she continued to have pain and drainage over a course of  
25 several weeks. The records confirm Respondent examined M.F. on December 8, 2004, under

1 10x magnification and noted the wound may be opening, but on that date it appeared intact and  
2 the implant secure.

3 28. Thereafter, the records provide some indication Respondent likely examined M.F.  
4 two more times between December 8, 2004 and December 27, 2004; however, those records  
5 were misplaced by Respondent's third-party dictation service, leaving M.F.'s record incomplete.

6 29. The next chart note is dated December 27, 2004 when Respondent notes, again  
7 under 10x magnification, that the right implant became visible out of an incision. Respondent  
8 removed the implant and specifically noted no signs or symptoms of infection. Patient M.F.  
9 alleges she later developed an infection which Respondent failed to manage and prevent by  
10 prescribing antibiotics at the time of removal. M.F., did not, however, seek further follow-up  
11 care with Respondent or otherwise contact Respondent after December 27, 2004.

12 30. Respondent had issues with incomplete medical records, adequacy of response to  
13 a records request and follow through with agreed upon services involving Patient M.F.

#### 14 CONCLUSIONS OF LAW

15 1. Pursuant to A.R.S. § 32-1800, et seq. the Arizona Board of Osteopathic  
16 Examiners in Medicine and Surgery has subject matter and personal jurisdiction in this matter.

17 2. The conduct and circumstances described in the Findings of Fact above constitute  
18 unprofessional conduct as defined in the following paragraphs of A.R.S. § 32-1854:

19 (6) Engaging in the practice of medicine in a manner that harms or may harm a  
20 patient or that the Board determines falls below the community standard.

21 (21) Failing or refusing to establish and maintain adequate records on a patient.

22 (28) Failing to make patient medical records in the physician's possession  
23 promptly available.

24 (35) Unprofessional conduct includes the following act; violating a federal, a state  
25 law or a rule applicable to the practice of medicine.

(38) Any conduct or practice that endangers a patient's or the public's health or  
may reasonably be expected to do so.

#### ORDER

1                   **NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:**

2 Pursuant to the provisions of A.R.S. §§ 32-1855 (D) and (I), that PAUL BLUMBERG, D.O.,  
3 (“Respondent”) shall be issued a **DECREE OF CENSURE**.

4                   **IT IS FURTHER ORDERED AND AGREED THAT** License No. 1597 held by  
5 Respondent shall be **SUSPENDED** for **SIX (6) months**; however, it is ordered and agreed  
6 **STAYING THE SUSPENSION**, and placing Respondent on **PROBATION** for a period of  
7 two (2) years from the date of this order with the following terms and conditions of probation as  
8 set forth herein:

9                   1.       Respondent shall, at his own expense, hire or appoint an independent Board  
10 Certified Plastic or Cosmetic Surgeon to observe the next TWENTY-FIVE (25) Breast  
11 Augmentation and/or abdominoplasty surgeries that Respondent completes. The observer shall  
12 update the Board of the surgeries and his/her opinion on surgical skill and technique of the  
13 Respondent as it applies to the prevailing standard of care.

14                   2.       Respondent shall obtain THIRTY (30) hours of additional CME in the area of  
15 identification and care of post surgical infections and patient communications. CME shall be in  
16 addition to that normally required and shall be completed with SIX (6) months of the effective  
17 date of this Order.

18                   3.       Respondent shall, at his own expense, undergo and successfully complete both  
19 Phase I and II given by Physician Assessment and Clinical Education Program (“PACE”) at the  
20 University of California, San Diego to determine Respondent's ability to safely practice medicine  
21 and surgery in the State of Arizona. Respondent shall provide a Certificate of Completion prior  
22 to the end of his probationary time frame.

23                   4.       Respondent shall, at his own expense, participate in and complete a pre-approved  
24 mini-residency and/or fellowship, or its equivalent, in the area of his current practice (cosmetic  
25 surgery). The program shall be pre-approved by the Board’s Executive Director and shall be  
completed within the 1st year of Probation.

1           5.     Respondent shall, at his own expense, hire an office management consultant  
2 ("Consultant") to review his record keeping practices, office staff responsibilities,  
3 physician/patient communication documentation and consent forms and overall office policies.  
4 This requirement is imposed to address overall record concerns existing, or which may exist,  
5 prior to the date of this Order. Respondent shall provide a copy of the recommendations of the  
6 Consultant to the Board and shall implement all of the recommendations within six (6) months of  
7 the date of this Order. The purpose of having this done is to ensure that Respondent is adhering  
8 with generally accepted standards of care and in compliance with all state and federal statutory  
9 mandates. The Consultant shall be pre-approved by the Executive Director.

10           6.     The Board or its designee shall determine Respondent's compliance and/or  
11 noncompliance with the stayed portion of this Order. If the Board or its designee determines that  
12 Respondent has been non-compliant with any of the terms of this Order during the probationary  
13 period, the stay of the suspension shall be lifted and Respondent shall begin his suspension as  
14 previously ordered.

15           7.     Respondent shall also, as part of his probation appear before the Board, upon  
16 receipt of a request by written or telephonic notification from the Board's executive director  
17 which shall be given at least five (5) days prior to the Board meeting.

18           8.     In the event Respondent moves and ceases to practice medicine in Arizona, he  
19 shall give written notice to the Board of his new residence address within twenty (20) days of  
20 moving; and, the terms and duration of probation may be stayed by the Board until Respondent  
21 returns to practice medicine in Arizona.

22           9.     Respondent's failure to comply with the requirements of this Order shall  
23 constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be  
24 considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in  
25 the event that Respondent fails to comply with any of the requirements of this Order.



ISSUED THIS 18<sup>th</sup> DAY OF OCTOBER, 2007.

STATE OF ARIZONA

BOARD OF OSTEOPATHIC EXAMINERS IN  
MEDICINE AND SURGERY

By: \_\_\_\_\_  
Jack Confer, Executive Director

Original "Consent Agreement" filed this 18<sup>th</sup>  
day of OCTOBER, 2007 with the:

Arizona Board of Osteopathic Examiners  
In Medicine and Surgery  
9535 East Doubletree Ranch Road  
Scottsdale AZ 85258-5539

Copy of the foregoing "Consent Agreement"  
sent via certified, return receipt requested  
this 18<sup>th</sup> day of OCTOBER, 2007 to:

Paul Blumberg, D.O.  
455 North Mesa Drive, #15  
Phoenix, AZ 85201

Copies of the foregoing "Consent Agreement" sent via regular  
mail this 18<sup>th</sup> day of October, 2007 to:

Blair Driggs, AAG  
Office of the Attorney General CIV/LES  
1275 West Washington  
Phoenix AZ 85007

Thomas M. Connelly, Esq.  
2425 East Camelback Road, Suite 880  
Phoenix, AZ 85016

\_\_\_\_\_  
*Kathleen Tucker*